STATE OF MICHIGAN

COURT OF APPEALS

ALPINE VALLEY LEASING COMPANY, INC., and SKIING UNLIMITED, INC., d/b/a ALPINE VALLEY SKI AREA,

Petitioners-Appellees,

v

CHARTER TOWNSHIP OF WHITE LAKE,

Respondent-Appellant.

UNPUBLISHED
August 23, 2007

No. 270041
Tax Tribunal
LC No. 00-309781

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

Respondent Charter Township of White Lake appeals as of right from an opinion and judgment of the Michigan Tax Tribunal, granting petitioners' request to revise the taxable value of ten parcels of property for tax years 2004 and 2005. We affirm.

"This Court's authority to review a decision of the Tax Tribunal is very limited." *Inter Coop Council v Dep't of Treasury*, 257 Mich App 219, 221; 668 NW2d 181 (2003). Absent an allegation of fraud, "[j]udicial review of a determination by the Tax Tribunal is limited to determining whether the tribunal made an error of law or applied a wrong principle." *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 31; 568 NW2d 332 (1997). The tribunal's factual findings will be upheld so long as they are "supported by competent, material, and substantial evidence on the whole record." *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002).

Respondent first argues that the tribunal erred as a matter of law when it denied respondent's motion to confirm the number of parcels at issue. Petitioners listed 15 parcels in their original petition, but later, in an addendum to their prehearing statement, listed only ten parcels and, under the heading "parcels no longer being appealed," listed the tax ID numbers for the five other parcels. Petitioners noted in a footnote that they would "submit a motion to voluntarily withdraw these parcels from the appeal." Petitioners never filed a motion. On August 9, 2005, however, the hearing referee issued a prehearing order indicating that there were only ten parcels at issue on appeal.

On January 20, 2006, respondent filed a motion to confirm the parcels under appeal, arguing that it never agreed to petitioners' request to reduce the number of parcels, and that the

reduction without respondent's consent was precluded by Tax Tribunal Rule (TTR) 205.1247(3). The tribunal denied respondent's motion. Thereafter, following an evidentiary hearing, the tribunal issued a judgment establishing a revised true cash value of the remaining ten parcels of $1,070,893 for 2004, and $1,102,969 for 2005.

We agree that TTR 205.1247(3) supports respondent's position that a motion is required to dismiss an appeal. It is undisputed that petitioners did not file a motion to dismiss the five parcels from the Tax Tribunal appeal. However, on August 9, 2005, an order was issued indicating that only ten parcels remained at issue on appeal. Under TTR 205.1288, respondent had 14 days to file a motion for rehearing or reconsideration if it believed that the order was entered in error. Respondent did not file its motion until January 2006, and the tribunal denied the motion as untimely. Because respondent did not timely file its motion, the tribunal was authorized to deny the motion on this basis under TTR 205.1288. Thus, its decision was not an error of law.

As to the merits, respondent argues that the Tax Tribunal's independent determination of true case value is not supported by competent, material, and substantial evidence. We disagree.

The parties agreed that the highest use for the property was for residential development. Additionally, the parties and the tribunal agreed that the sales-comparison approach was the appropriate method for determining true cash value. "The sales-comparison approach indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties." *Meadowlands Ltd Dividend Housing Ass'n v City of Holland,* 437 Mich 473, 485 n 19; 473 NW2d 636 (1991).

Respondent challenges several of the tribunal's factual findings that supported its assessment of the property's true cash value. Specifically, respondent challenges the tribunal's findings regarding the availability of a sanitary sewer line, the development potential for the property, and the choice of comparable properties to consider, and argues that the tribunal erred in rejecting respondent's valuation evidence.

We are not convinced that the tribunal erred by failing to recognize the availability of sewer lines. The tribunal stated in its findings that petitioners had presented testimony that the property had "no available access to public sewer" at the time of inspection. The tribunal further stated that respondent's assessor agreed that there were no sewer lines on the property, and that a developer would incur the cost of bringing the sewer line from M-59 to the property. The tribunal's findings regarding sewer access and availability are supported by the testimony and, accordingly, we find no error. *ProMed Healthcare, supra.*

Respondent's next argument is that the tribunal underestimated the value of the property because it assumed that it could only be developed at densities of between one- and two-acre lot sizes when, respondent contends, it could actually be developed at a rate of 1-1/2 dwellings an acre. Respondent specifically argues that the tribunal's five percent upward adjustment to petitioners' Comparable No. 3 was grossly inadequate, because petitioners' Comparable No. 3 had a minimum lot size of ten acres, while the subject property could have had up to 16 times more units.

Evidence presented by respondent showed that the allowed density on the property was 1.5 units an acre with sewers, and 0.4 units an acre, without sewers, and that the master plan governed development 80 to 90 percent of the time. The evidence also showed that petitioners' Comparable No. 3 could be developed at approximately five times a greater density than the subject property until the property was developed to provide sewers. Neither petitioners nor respondent suggested that the subject property had a higher comparable value on the factor of zoning, but the tribunal concluded that some adjustment was warranted. Again, the tribunal's findings are supported by competent, material, and substantial evidence on the whole record. *ProMed Healthcare, supra*.

Respondent also argues that the tribunal erred in considering petitioners' Comparables No. 1 and No. 3 because they are too dissimilar to the subject property. Both parties submitted proposed comparable properties, and the tribunal considered four of the properties. Two of the properties considered by the tribunal were approved by respondent's assessor. Respondent's assessor raised no specific objections to petitioners' Comparable No. 1, except that the new owner chose not to develop it. Her only objection to petitioners' Comparable No. 3. was that it was not in the township. Although petitioners' Comparables Nos. 1 and 3 did not match the subject property with respect to some factors, they were not entirely dissimilar, and the tribunal also considered two other properties that respondent's assessor approved. We find no basis for reversal.

Finally, respondent argues that the tribunal erred in rejecting respondent's valuation evidence and in accepting much of petitioners' evidence. "The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389-390; 576 NW2d 667 (1998). The evidence showed that petitioners' assessor provided a signed valuation and that he compared the properties on several factors to reach a value for the subject property. Respondent's community development director did not prepare a report, and did not testify about the property's true value. Respondent's assessor did not sign her report, made no adjustments for soil conditions or other factors that may have affected the values of the comparable properties, and she relied on a demolition estimate from someone she could only identify as "Betty." The tribunal was not required to accept respondent's valuation.

After reviewing the record, we conclude that the tribunal did not err in reaching an independent determination, as it was permitted to do. Because its value determination is supported by competent, material, and substantial evidence on the whole record, we must affirm its decision.

Affirmed.

/s/ Donald S. Owens
/s/ Helene N. White
/s/ Christopher M. Murray